

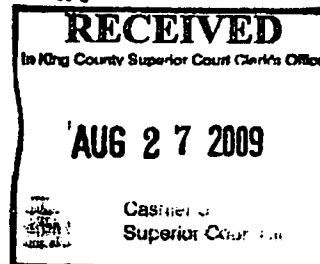
EXHIBIT C

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2009 AUG 27 AM 11:18

KING COUNTY
SUPERIOR COURT

STAMP
and
RETURN



SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

WASHINGTON FAMILIES STANDING
TOGETHER, and ANNE LEVINSON,

Plaintiffs,

v.

SECRETARY OF STATE SAM REED, in
his official capacity,

Defendant.

No. 09-2-31908-1 SEA

DECLARATION OF ANNE LEVINSON IN
SUPPORT OF PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER

JULIE SPECTOR

I, Anne Levinson, declare:

1. I am the chair of Washington Families Standing Together (WAFST). I have personal knowledge of the facts set forth in this declaration and am competent to testify thereto.

2. WAFST is a statewide campaign endorsed by more than of 150 community and faith-based organizations that all support Engrossed Second Substitute Senate Bill 5688 ("the enhanced domestic partnership law") that is the subject of Referendum 71.

DECLARATION OF ANNE LEVINSON - 1

Perkins Cole LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1 3. WASFT's purpose is to ensure that the domestic partnership law is not
2 overturned, which would impact more than 5,000 already registered domestic partners and
3 those who will in the future register to be domestic partners. These domestic partners will
4 be harmed if Engrossed Second Substitute Senate Bill 5688 does not take effect or is
5 delayed from taking effect by being certified to be placed on the general election ballot in
6 November, because they will not have the protections afforded by the law.
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12 4. I am a citizen of Washington, a resident of King County, a lawful registered
13 voter in King County, and an elector of Washington State as that term is defined in RCW
14 29A.04.061.
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18 5. Attached as Exhibit A is a true and correct copy of a letter I sent to the
19 Secretary of State ("SOS") on behalf of WASFT on August 21, 2009.
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23 6. Attached as Exhibit B is a true and correct copy of a memorandum dated
24 August 26, 2009 from Nick Handy of the SOS which denied WAFST's request to disqualify
25 signatures on Referendum 71 petitions that lacked completed and truthful declarations from
26 the signature gatherer.
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33 **I declare under penalty of perjury under the laws of the**
34 **State of Washington that the foregoing is true and correct.**

35 EXECUTED at Seattle, Washington, this 27th day of August, 2009.
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ANNE LEVINSON

DECLARATION OF ANNE LEVINSON - 2

71718-0001/LEGAL16818300.1

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Via Email
August 21, 2009

Washington Secretary of State
Legislative Building
PO Box 40220
Olympia, WA 98504

Attn: Nick Handy

Re: Disqualification of Signatures on Petitions Lacking Completed & Truthful Declaration

Dear Mr. Handy,

On behalf of Washington Families Standing Together (WAFST), I am writing in regard to the Referendum 71 signature validation process to request that the Office of the Secretary of State (OSOS) invalidate all signatures on accepted petitions that were not signed by the signature-gatherer, as is required by law.

RCW 29A.72.130 requires that a declaration signed by the signature-gatherer (emphasis added) be placed on the back of each referendum petition, which must read, in relevant part:

I, ____, swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true names and the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violation being punishable by fine or imprisonment or both.

RCW 29A.72.130 requires that the declaration must be filled out and signed by the signature-gatherer who circulated the petition. The signature-gatherer must attest to certain facts on the basis of personal knowledge; that the individual personally circulated the petition, and that to the best of the individual's knowledge, no fraud was committed therein. If the declaration is not signed, or if it is not signed by the person who collected the signatures on it, the petition does not contain the information required by statute and must be disqualified.

RCW 29A.72.130 codified House Bill 1222, which was enacted in 2005, and both the statute itself and the legislative history are clear that the purpose of adding the declaration as a required element of petitions was as an important anti-fraud tool. Signature fraud, particularly after the advent of the use of paid signature-gatherers, is a very real problem, and the State has a compelling interest in combating that problem.

Requiring that a signature-gatherer sign a declaration combats fraud by (1) allowing signature fraud to be tracked and prevented by tying a particular signature-gatherer to each petition that he or she circulated; and (2) warning signature-gatherers with full notice of the penalties that await those who engage in signature fraud. Requiring signed declarations on petitions is not unique. Fraud prevention is

the reason why every state that requires a signature-gatherer affidavit also requires it to be signed. Otherwise it is simply a blank stamp and can in no way deter fraud. It is no less a requirement than the requirement that the entirety of the law be included on the petition so that potential signers can read it if they so choose. Both are tools to prevent fraud and both must be enforced to be effective.

The signature-gathering conducted by proponents of Referendum 71 was in fact tainted by instances of signature-gatherers engaging in misconduct¹ and attempting to mislead voters into signing the petition.² Numerous voters were misled into thinking that they should sign a petition if they *supported* the expansion of rights for domestic partners, two of whom went to the trouble of contacting the OSOS to ask that their signatures be removed from the petitions and not counted in the final total.³ OSOS denied their request.

On July 25, 2009, Protect Marriage Washington (PMW) submitted its Referendum 71 petitions. The petitions had instructions on them for signature-gatherers that "[b]efore you mail in your petition, make sure to print and sign your name here." A large black arrow on the petitions indicates a line specifically provided for the signature-gatherer's signature.⁴ Additionally, the campaign instructed signature-gatherers to comply with this requirement.⁵

The campaign sorted and organized its petitions at the bottom of the Capitol stairs in Olympia and then handed boxes of petitions to OSOS staff. During this process, PMW personnel apparently realized that many signature-gatherers had not filled out the signature-gatherer declaration on the back of a number of the petitions. PMW personnel obtained a signature stamp from Larry Stickney, the campaign manager for PMW, and proceeded to affix his name on thousands of petitions whose signature-gatherer had not completed the declaration. This stamping was observed by OSOS staff. This is problematic for two reasons. First, it is fraud for a person to sign a declaration in someone else's name. Second, it is a violation of the statute to fill out the declarations in this way since Larry Stickney did not personally circulate each of the petitions in question and had no personal knowledge of any of the facts stated in the declarations.

Pursuant to a public disclosure request WAFST made on August 12, 2009, the OSOS reviewed the Referendum 71 petitions the OSOS had accepted and determined that included among the accepted

¹ <http://www.youtube.com/watch?v=47u2m4hH0SQ>

http://www.tdn.com/articles/2009/07/22/breaking_news/doc4a67861c702d9809533311.txt

² The PMA petitions also included false and misleading information, stating that the law "effectively makes same-sex marriages legal" and that "[if] same-sex marriage becomes law, public schools K-12 will be forced to teach that same-sex marriage and homosexuality are normal...even over the objections of parents. Sign R 71 to protect children." Neither of these statements is true.

³ OSOS response to Anne Levinson Public Disclosure request of August 19, 2009.

⁴ Referendum 71 signature-gatherers were expressly cautioned that petitions would be thrown out if they did not completely comply with Washington law, and that this meant that "[a]ll Signature Gather[er]s must sign the back of their petition form."

⁵ Signature-gatherers were further instructed "Be sure to read instructions on proper signature gathering. Remember this includes your signature on the back of the petition." *Faith & Freedom Network Daily Blog*, June 9, 2009.

petitions were 2,680 petitions with a total of 36,154 signatures, where the declarations either were blank [162 petitions with 2,058 signatures] or where the declarations had been stamped with Larry Stickney's name [2508 petitions with 33,966 signatures].

In sum, 2,680 petitions containing 36,154 signatures are not in the form required by RCW 29A.72.130 because they were not signed by the signature-gatherer who distributed them. Under RCW 29A.72.170, the OSOS should have rejected these petitions. Instead, it accepted them, artificially adding as many as 36,154 signatures to the count now being used to potentially qualify the measure for the ballot.

It has been argued by some that the Legislature only required that the declarations be included on the petitions, but not that they be signed. It would be more than anomalous for the Legislature to create a declaration requirement to combat fraud *and then not require it to be signed by the person who circulated the petition*. Under that approach, any initiative or referenda petition could have a declaration that is completely blank or filled in with any random name, signed by someone who has no idea whether the signatures on a petition are valid, thus vitiating the entire purpose of the statute. These declarations were specifically added to petitions by the Legislature to address the potential for fraud, and unless a declaration is signed by the person who collected the signatures, it cannot serve that intended purpose.

WAFST asks that the OSOS invalidate all signatures on accepted petitions that were not signed by the signature-gatherer, as required by law, or were not even signed by the person whose name is found on the declaration, and deduct 36,154 signatures from the signature count being used by the OSOS to certify Referendum 71 for the ballot.

Sincerely,



Anne Levinson
Chair, WAFST

Memorandum

August 26, 2009

To: Referendum 71 Proponents and Opponents
From: Nick Handy, Director of Elections, Office of Secretary of State
Subject: Referendum 71 Update

This will provide an update on the Referendum 71 check and provide closure on several outstanding issues.

Certification or Rejection Date. Our office is working toward a certification or rejection decision on Referendum 71 no later than Tuesday, September 1, 2009. We expect to complete the initial check and master check Friday, and the recent registration check Monday or Tuesday. Based upon progress Friday, we will decide whether to work Saturday to complete the recent registration check.

Drop Dead Date. The date that this office and the county election offices must know whether Referendum 71 will be included on 3.5 million ballots and in over 3 million Voters' Pamphlets is Thursday, September 10, 2009. We will advise any reviewing court that litigation over Referendum 71 must be completed by this date. Any date after that time compromises our state's ability to get ballots to military and overseas voters because federal and state standards require ballots to be mailed by Saturday, October 3, 2009.

Signature Gatherer Declaration. We received a request from Washington Families Standing Together inquiring how many signatures appear on petition sheets that do not contain a signed declaration of the signature gatherer on the back. On August 19, 2009, our office provided all parties data on how many signature sheets are impacted by this issue. We have received a further request from Washington Families Standing Together to reject all petition sheets and signatures that do not contain a signed declaration on the back. Based on advice issued by the Attorney General's Office in 2006, our office will not reject any petition sheets or signatures on this basis. See AGO 2006 No. 13, copy attached.

Special Assistance. We have a request from Protect Marriage Washington to provide checkers with special expertise or information on ethnic names. We have considered this request and decided that we will not be accepting special assistance from advocacy groups on either side of this check.

Further Reviews. In a report issued by Assistant Director Shane Hamlin on August 19, 2009, our office described the results of several special reviews requested by both sides and indicated at that time that our office would not conduct further special reviews. Our reasons for this decision are set forth in that document. We now have a request from Washington Families Standing Together to reconsider that decision and to undertake an additional special review of signatures that have been approved. Consistent with our earlier decision, our office has decided to not conduct any further special reviews.

Registration Dates. A point of contention in this signature check has been the state's practice of accepting signatures of voters who are registered as of the date of the check. We have a request by Washington Families Standing Together for data related to signatures accepted during the recent

registration check that have a registration date (1) before June 19, 2009 or (2) on or after July 25, 2009. Once the recent registration check is complete, we will release the number of accepted signatures meeting these criteria. We conducted a sample check today of 150 signatures accepted during the recent registration check. That sample check found 45 signatures with a registration date prior to June 19, 2009 and one signature with a registration date after July 25 (July 29, 2009). RCW 29A.08.020(2) provides that the registration date is the postmark date or, if no postmark is available, the date of receipt.

Cc:

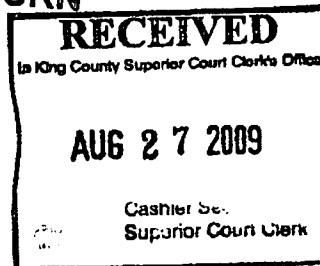
Larry Stickney, Protect Marriage Washington
Stephen Pidgeon, Attorney at Law
Anne Levinson, Washington Families Standing Together
David Ward, Legal Voice
Kevin Hamilton, Perkins Coie
Jeff Even, Attorney General's Office

EXHIBIT D

2009 AUG 27 AM 11:18

KING COUNTY
SUPERIOR COURT

STAMP
and
RETURN



SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

WASHINGTON FAMILIES STANDING
TOGETHER and ANNE LEVINSON,

Plaintiffs,

v.

SECRETARY OF STATE SAM REED, in
his official capacity,

Defendant.

NO 9-2-31908-1 SEA

DECLARATION OF JONATHAN
MACARANAS

JULIE SPECTOR

I, Jonathan Macaranas, declare:

1. On behalf of Washington Families Standing Together, I served as an observer of the signature verification process for Referendum 71 conducted by the Secretary of State's Office (SOS). I have personal knowledge of the facts set forth in this declaration and am competent to testify thereto.

2. On the morning of August 20, 2009, I observed SOS staff while they attempted to locate voter registration records in the "live" statewide voter registration

DECLARATION OF JONATHAN
MACARANAS - 1

71718-0001/LEGAL16791533.1

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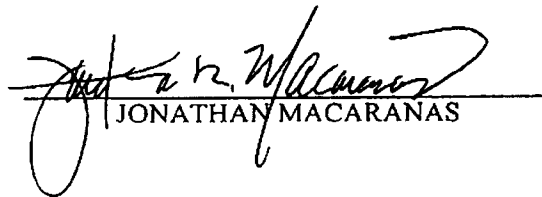
1 database for persons who signed Referendum 71 petitions. This process was part of the
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3 SOS's "recent registration review" of Referendum 71 signatures in which staff used the
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5 "live" database to conduct a third review of all signatures that had not been previously found
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7 by initial or master checkers using a different database. The "live" database includes the
8
9 voter registration date for each voter.

10 3. While observing this process on the morning of August 20, 2009, I observed
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12 SOS staff accept signatures on Referendum 71 petitions in at least two cases where it
13
14 appeared that the voter registration date listed for those individuals in the "live" database
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16 was July 30, 2009.

17 4. I asked Dave Motz of the SOS to review these two signatures, but he declined
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19 to do so, based on the SOS's position that the voter's registration date did not matter.
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23 **I declare under penalty of perjury under the laws of the**
24 **State of Washington that the foregoing is true and correct.**
25

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27 EXECUTED at SEATTLE, Washington, this 26 day of AUG 2009,
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29 2009.
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34 JONATHAN MACARANAS
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DECLARATION OF JONATHAN
MACARANAS - 2

71718-0001/LEGAL16791533.1

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Seattle, WA 98101-3099
Phone: 206.359.8000
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EXHIBIT E

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9 THE HONORABLE JULIE A. SPECTOR
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17 SUPERIOR COURT OF THE STATE OF WASHINGTON
18 FOR KING COUNTY
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20 WASHINGTON FAMILIES STANDING
21 TOGETHER and ANNE LEVINSON,
22

23 Plaintiffs,
24

25 v.
26

27 SECRETARY OF STATE SAM REED, in
28 his official capacity,
29

30 Defendant.
31
32

No. 09-2-31908-1 SEA

DECLARATION OF WILLIAM B.
STAFFORD IN SUPPORT OF
PLAINTIFFS' REPLY BRIEF ON MOTION
FOR TEMPORARY RESTRAINING
ORDER

33 I, William B. Stafford, declare:
34

35 1. I am an attorney with Perkins Coie LLP, counsel for plaintiffs in the above-
36 captioned matter. I have personal knowledge of the facts set forth in this declaration and am
37 competent to testify thereto.
38
39

40 2. According to State Elections Director Nick Handy, employees of the Office
41 of the Secretary of State ("SOS"), have followed a 2006 opinion of the Attorney General's
42 Office that the signature-gatherer declaration set forth in RCW 29A.72.130 need not be
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STAFFORD DECLARATION IN SUPPORT OF
REPLY BRIEF ON PLFS' MOTION FOR
TEMPORARY RESTRAINING ORDER - 1

71718-0001/LEGAL16854487.1

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1 signed because SOS employees "as state officers . . . are bound to follow the Attorney
2 General's advice." See [http://blogs.secstate.wa.gov/FromOurCorner/index.php/2009/08/5-](http://blogs.secstate.wa.gov/FromOurCorner/index.php/2009/08/5-questions-about-r-71-suits-and-shifts/)
3 [questions-about-r-71-suits-and-shifts/](http://blogs.secstate.wa.gov/FromOurCorner/index.php/2009/08/5-questions-about-r-71-suits-and-shifts/), which was printed on August 31, 2009, and is
4 attached as Exhibit A.
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11 **I declare under penalty of perjury under the laws of the**
12 **State of Washington that the foregoing is true and correct.**
13

14
15 SIGNED at Seattle, Washington, this 31st day of August, 2009.
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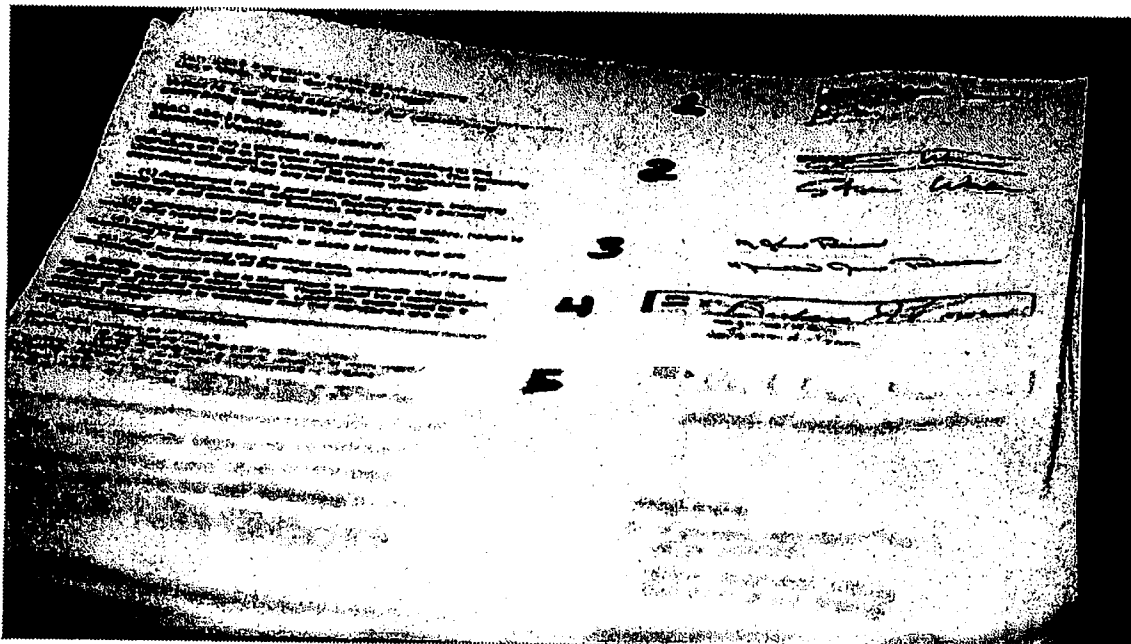
20 WILLIAM B. STAFFORD
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5 Questions about R-71: Suits and shifts

by Christina Siderius | August 28th, 2009

Friday greetings, fervent check followers! We're kick-starting your weekend discussions today in 5 Questions, where our team talks you through your R-71 check questions. It's all shifts and suits (though not the pinstripe kind) ...



Q) Why does the recent lawsuit say that the Secretary of State accepted signatures on petitions that were not certified by the petition circulator?

One of the key points made in the lawsuit filed Thursday by Washington Families Standing Together against the Secretary of State is that a number of signatures were collected by signature gatherers who did not sign the backs of the petitions. The plaintiffs are pointing to a state law passed in 2005 requiring that a declaration be printed on the back of the petitions.

According to State Elections Director Nick Handy, the Elections Division since June 2006 has followed the advice of a formal Attorney General's Opinion (AGO) regarding the 2005 law. Here is that May 2006 AGO, which can be found on the Attorney General's Web site: <http://www.atg.wa.gov/>.

"Based on what the Attorney General's Opinion says, if the declaration is not printed on the back of the petitions, our office will reject the petition sheets," Handy said. "Under the Attorney General's opinion, the declaration does not have to be signed. If it is not signed, our office will not reject the petition sheets. Since 2006, we have consistently advised all initiatives and referendum sponsors that they do not have to submit signed declarations on the back. They do have to submit petition sheets with the declaration printed on the back."

Handy pointed out that the Legislature has not changed the law since the Attorney General opinion.

Decl. of W. Stafford- 3

EXHIBIT A

<http://blogs.secstate.wa.gov/FromOurCorner/index.php/2009/08/5-questions-about-r-71-su...> 8/31/2009

"Since 2006, this has been the published position of our office. It is posted on our Web site and it has been disseminated to every initiative and referendum sponsor. While our position is not secret, this is the first time the issue has been litigated. As state officers, we are bound to follow the Attorney General's advice," Handy said.

Hey, what's going on with all these lawsuits?

We have two lawsuits active right now that will be heard next week.

The first relates to whether copies of petition sheets should be made public. That case is in federal district court in Tacoma and will be heard Thursday, September 3. Federal District Court Judge Ben Settle will hear that case.

The second relates to whether an injunction should be issued preventing the Secretary of State from certifying Referendum 71 to the 2009 General Election ballot. That case will be heard before King County Superior Court Judge Julie Spector on Monday afternoon at 2:30 in the King County Superior Court.

We'll blog on these rulings as they come down. Stay tuned!

(Team Note: We won't be commenting publicly about positions being taken in the lawsuit. We appreciate your patience and understanding on that. The case is scheduled for hearing next week, so we will all know soon about everyone's arguments and the court's ruling. Thanks all.)

Q.) How many signatures initially "rejected" in the first round of checks have been shifted to the "accepted" pile as the result of subsequent checks?

The so-called "recent registration check", also known as the "third check" has resulted so far in 1,098 registrations being moved from "not found" to "match."

The third check is using the live database to determine if any registrations "not found" on the June 19 copy of the database have made their way into the database since that time. Since the Referendum 71 sponsors were actively registering voters throughout July, we are not surprised to find significant numbers of new registrations for this petition.

Our system is not designed to capture shifts made by checkers between the first check and the second check ("the master check"). When a signature is "rejected" on the first round, it is essentially "held" until the second checker has made a decision on it. Because of that, we only track the second-check outcome, which is the number we release online each day.

Q.) How many voters are listed in the voter database as of July 25, 2009 (the petition turn-in day), and how many people who signed the petition were listed as registered after July 25?

First, the database is very fluid. Voters are added and subtracted every day. That is because new people register every day. Some people die. Some people move out of state. The database could have 100 today and 100 tomorrow but that might mean that 5 people died, 5 people moved, 10 new people registered, and 10 more moved from one county to another so the numbers never changed but lots of change occurred. It is very hard to draw conclusions about how many new registrants came into the system.

We will be reporting to the court exactly how many names are approved on the petition with registration dates after July 25. Based on current projections, we expect about 30 names will be affected by this category. Most of these are people who signed the petition shortly before the July 25 deadline and

submitted voter registrations forms that were processed later. The bottom line is that the issue only appears to affect about 30 voters out of the 138,000 who signed the petition.

Q.) Why is it that when “rejected” signatures are looked at again and again there is sometimes a shift to “accepted” status? Isn’t there something wrong if you look at the same rejected signatures over and over and get different results?

The biggest reason that a signature is initially rejected is because it is designated “not found.” Now, maybe that’s what’s confusing. We could more accurately describe this designation as “not found at this moment with this specific information – but it could be found later if we found more information.” (But that would be really long.)

The first checkers run the name as it appears on the petition, with the address listed on the petition. BUT, sometimes the voter signed her maiden name, a nickname, an initial, or included a new address that just doesn’t match our records. The master checker is able to take more time reviewing all these little pieces and work through the various clues of information to find that voter. Many voters are the “needle in the haystack” sort (say, a “John Smith” who moved and didn’t change his registration card ... yikes!) and the second check is intended to spend more time locating that voter (like looking through 300 “John Smith” signatures for the correct voter).

Don’t laugh. We do have over 30,000 Johnsons and 30,000 Smiths on the database. If we don’t have a good first name and a bad address, they are long shots. That is really too bad because even if they have moved they are still registered voters entitled to sign the petition. The signer just has not given us enough current information to help us find them. But, that is why we make the second effort with the master check to find these very difficult signatures.

This is generally why an initially rejected signature goes to the accepted pile: the second checker was able to locate that voter in the database. The “second set of eyes” step of this process has long proven to be an effective way for us to verify signatures.

Have a question about the R-71 checks? If you can’t find it in our comprehensive R-71 FAQs, then leave us a comment and our team will do our best to answer or clarify in our M-F “5 Questions” posts. You may also want to watch our video of the check to give you a visual on the process.

Leave a Reply

<input type="text"/>	Name (required)
<input type="text"/>	Mail (will not be published) (required)
<input type="text"/>	Website

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Decl. of W. Stafford- 6

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Washington Secretary of State

Legislative Building

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Decl. of W. Stafford- 7